IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 352 OF 2001

Shaukat Haider Shaikh ..Appellant
Vs.
Latabai Uttam Pawar @
Lata Shaukat Shaikh and ors. ..Respondents

Mr. V.Z. Kankaria for appellant.
Mr. P.S. Dani for respondent no.1.
Mr. S.M. Sabrad for respondent no.3.
Mr. P.N. Joshi and Mr. Kishor S. Patil for respnodent no.4.

CORAM: B.H. MARLAPALLE, J.

Date : March 21, 2007.

P.C.:

1. Heard Mr. Kankaria the learned counsel for the appellant-plaintiff, who is aggrieved by the decree passed by the Lower Appellate Court in Civil Appeal No. 112 of 1999, thereby setting aside the findings of the trial court regarding the entry dated 10/12/1988 (Exh.54) in the Register maintained by the defendant no.2 Village Panchayat.

2. The plaintiff had filed Regular Civil Suit No.162 of 1993 for multiple reliefs, namely, (a) for cancellation of the entry made in birth register on

10/12/1988 showing the plaintiff as father of defendant no.4, (b) for perpetual injunction restraining the defendant nos.3 and 4 from demanding any amount on the basis of the said entry and (c) for a declaration that defendant no.3 was not his wife and defendant no.4 was not the son born to defendant no.3 from him. The learned Judge of the trial court partly decreed the said suit by holding that defendant no.3 was not the legally wedded wife of the plaintiff and the entry was effected by collusion between defendant nos.1 to 3 and it was a false entry. The prayer for injunction as well as for declaration was rejected. Before the trial court defendant no.1 who was working as the Nurse in the Primary Health Centre where defendant no.4 was born to defendant no.3 was examined and similarly one Shri Manohar Sanap was examined as the witness of Village Panchayat. The defendant no.3 had appeared for herself and for her minor son as the witness.

3. The Lower Appellate Court while agreeing with the findings that defendant no.3 was not the legally wedded wife of the plaintiff, held that the plaintiff

was staying with the defendant no.3 and was co-habiting with her and defendant no.4 was born to defendant no.3 from the plaintiff. In support of these findings, the Lower Appellate Court has referred to the oral and documentary evidence of defendant nos.1,2 and 3. The defendant no.3 through her evidence had brought on record a copy of the ration card at Exh.67 and birth extract at Exh.54. The ration card at Exh.67 clearly indicated that it was issued on the application made by the plaintiff to the Tahsildar, Niphad and in the said ration card defendant no.3 was shown as the wife of plaintiff-Shaukat and defendant no.4 was shown to be the minor son born to the couple. The plaintiff did not furnish any explanation on this ration card. The defendant no.1 while in the witness box stated that she was working as a Nurse in the Primary Health Centre where defendant no.3 was admitted for her delivery and she had given the name of her husband as Shaukat. Accordingly, she had submitted the information to defendant no.2 regarding the birth of defendant no.4.

4. The plaintiff evidently filed the suit to

nullify or get over the orders passed in Misc. Application No.309 of 1991. The said application was filed against him by defendant no.3 under Section 125 of Cr.P.C. claiming for maintenance and by the order dated 6/3/1993 the application was allowed by fixing the maintenance amount at Rs.250/-. The plaintiff unsuccessfully challenged the said order in Criminal Revision Application No. 123 of 1993 before the learned Sessions Judge. It is clear that the plaintiff knew a legal remedy by filing a suit fell at the hands of the Lower Appellate Court. The view taken by the Lower Appellate Court in holding that defendant no.4 was the son born to defendant no.3 from the plaintiff is based on facts and having been proved that the plaintiff was co-habited with the defendant no.3.

5. Hence in this second appeal there does not raise any substantial question of law for the consideration of this court and, therefore, it must fail at the threshold.

6. The appeal is hereby dismissed.

(B.H. Marlapalle,J.)